

REMARKS/ ARGUMENTS

Applicant has carefully studied the nonfinal Examiner's Action mailed December 23, 2008, having a shortened statutory period for response set to expire March 23, 2009. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Claim Rejection - 35 U.S.C. § 102(b)

Claims 6 and 11-14 stand rejected under 35 U.S.C. §102(b) in light of *Geiser* (U.S. Pat. 3,514,157). The Office Found *Geiser* anticipates claim 6, providing citation to the elements of claim 6, labeled as claim 1. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."¹ The Office found that *Geiser* discloses "a normally closed valve 3 disposed in sealing engagement with said opening 10"² Applicant respectfully points out that *Geiser* provides that the fluid is introduced into a valve means, after which the "valve means is restricted by blocking or tying valve means[.]"³ Furthermore, *Geiser* states that "fluid shall be free to pass through said valve means *in either direction*, as the pressure conditions on each side of said valve means permit."⁴ *Geiser* does not discuss a normally closed valve, but provides for a valve that is normally open, allowing fluid to freely pass in either direction. Thus, *Geiser* fails to describe each and every element of claim 6 and cannot anticipate claim 6.

Additionally, Applicant has amended claim 1, which provides "wherein said first inflatable bladder is connected to each said sidewall and wherein said first inflatable bladder is disposed in protecting relation to said bottom wall of said box[.]"⁵ *Geiser* does not address this additional limitation and therefore fails to anticipate claim 6. Applicant also notes that the amendment to claim 6 is supported in the original disclosure.⁶

¹ MPEP 2131 (citing *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

² Page 3 of the non-final Office Action, dated December 23, 2008 (citing *Geiser* (U.S. Pat. 3,514,157) column 4, lines 30-32)

³ *Geiser* (U.S. Pat. 3,514,157) column 4, lines 30-40.

⁴ *Geiser* (U.S. Pat. 3,514,157) column 3, lines 28-33.

⁵ Claim 6, amended herein.

⁶ See, page 5, paragraph 32; figure 10 of the Application.

Applicant notes that the reference cited by the Office in rejection of claims 11 and 12 references a figure, specifically “(see figure above)”, but that the Office Action does not provide any reference to figures prior to this rejection. Applicant also points out that the Office did not provide information as to where *Geiser* discloses a “first inflatable bladder 2 when inflated serves as a cushioning means for said item 4 during shipping.”⁷

Applicant respectfully submits the changes to claims 6 and 10, along with the response hereto, address the concerns enunciated by Office. Further, as claim 6 is not anticipated, all claims dependent thereon are not anticipated as a matter of law.

Accordingly, it is respectfully requested that the 35 U.S.C. § 112, second paragraph rejection be withdrawn.

Claim Rejection - 35 U.S.C. § 103

Claim 7 stands rejected under 35 U.S.C. § 103(a), as being obvious over *Geiser* and *Sposito, Jr.* (U.S. Pat. 3,521,743). The Office found *Geiser* discloses the invention as claimed in claim 6, but fails to provide a second inflatable bladder disposed in the box interior in cooperative relation with the first inflatable bladder.⁸ The Office found that *Sposito, Jr.* compensates for *Geiser* by disclosing a second bladder in the box interior in cooperative relation with the first bladder.⁹ The Office then concluded it would be obvious to combine the references because states the modification would secure an article in the box, preventing damage.¹⁰

The present invention provides for the first inflatable bladder to be attached to the four sidewalls of the package with a portion of the bladder extending to cover the bottom of the package. This permits the cushion to be inflated at the bottom and sides at the same time, thereby providing an efficient cushioning around the article, as seen in figures 4 and 10. The prior art must be reviewed as a whole, including parts that teach away from the invention.¹¹ *Sposito, Jr.* provides using two cushions on opposite sidewalls to “sandwich” the article in place.¹² *Sposito, Jr.* noted that the cushions sag, which may result in the article being off-center.¹³ A guard must be used to properly position the article between the cushions, so that the

⁷ Page 3 of the non-final Office Action, dated December 23, 2008.

⁸ Page 4 of the non-final Office Action, dated December 23, 2008.

⁹ Page 5 of the non-final Office Action, dated December 23, 2008.

¹⁰ *Id.*

¹¹ MPEP 2143.03(VI).

¹² *Sposito, Jr.* (U.S. Pat. 3,521,743), column 1, lines 58-62; figures 1-6, specifically figure 2.

¹³ *Sposito, Jr.* (U.S. Pat. 3,521,743), column 3, lines 35-42.

article is properly positioned between the inflated cushions.¹⁴ “All limitations of a claim must be considered when weighing the differences between the claimed invention and the prior art in determining the obviousness of a process or method claim.”¹⁵ The limitations provide a cushion that surrounds the article and fills the interstitial space under the article and on the sides of the article. The use of a second cushion will not sandwich the article between the cushions, as the article is surrounded on at least 5 sides by the package claimed in claim 7, as seen in figure 10. This removes any need for the gates to position the article within the box, as the cushions “self-position” the article during inflation by the action of inflating the cushions. The cited references do not discuss the orientation of the cushions disclosed in the present invention, as claimed. Therefore, the references fail to obviate the claimed invention

Accordingly, Applicant respectfully requests the Office withdraw the 35 U.S.C. § 103 rejection of claim 7.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested.

Very respectfully,

SMITH & HOPEN

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¹⁴ *Sposito, Jr.* (U.S. Pat. 3,521,743), column 1, lines 19-22; column 3, lines 43-47.

¹⁵ MPEP 2116.01. See also, MPEP 2143.03.

CERTIFICATE OF ELECTRONIC TRANSMISSION

(37 C.F.R. 2.190 (b))

I HEREBY CERTIFY that this correspondence is being electronically transmitted to the Patent and Trademark Office through EFS Web on March 23, 2009.

Date: March 23, 2009

/lauren reeves/

Lauren Reeves